

REMARKS

By this amendment, claims 1-6, 8-13, 16, and 18-20 are pending, in which claims 7 and 14 are canceled without prejudice or disclaimer, claims 1-5, 8-13, 16, and 17 are currently amended, and claims 18-20 are newly presented. No new matter is introduced.

The Office Action mailed August 31, 2010 rejected claim 16 under 35 U.S.C. § 101 as non-statutory subject matter, claims 1-4 and 6 as obvious under 35 U.S.C. § 103 based on *Pelaez et al.* (US 2003/0147373) in view of *Hymel.* (US 2003/0216137) and further in view of *Oren* (US 2003/0169865), and claims 5 and 7 as obvious under 35 U.S.C. § 103 based on *Pelaez et al.* (US 2003/0147373) in view of *Hymel.* (US 2003/0216137), further in view of *Oren* (US 2003/0169865), and further in view of well known prior art.

Regarding the rejection of claim 16 under § 101, Applicants have amended the claim to recite a “non-transitory computer-readable storage medium,” and thus, submits the rejection is overcome.

Moreover, to reduce issues for potential appeal, Applicants have amended independent claims 1, 8, 16, and 17 to recite “**determining to transmit the multimedia message to a voice mail box associated with the telephone number.**” This feature is found in dependent claims 7 and 14, which are now canceled.

The Office Action, on page 5, takes Official Notice for the fact that “transmitting voice or multimedia signals to the voice mail box of a user is well known in the art.” Applicants do not necessarily disagree that **voice signals** are transmitted to a voice mail box, but to transmit **multimedia signals** would encounter technical compatibility issues. That is, a traditional voice mail system cannot simply receive multimedia signals as voice mails. Surely the Office Action is not suggesting that storing multimedia signals in conventional voice mail systems is well

known. Although the Examiner may in some instances take official notice of certain facts to fill in the gaps, such facts should not comprise the principle evidence upon which a rejection is based. See *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970).

Pursuant to the MPEP § 2144.03, Applicants respectfully traverse the Official Notice and request the Examiner to produce references showing the claim features or withdraw the rejection as factually inadequate.

Furthermore, the rationale presented in the Office Action appears to be nothing more than an agglomeration of bits and pieces of the claimed subject matter thrown together through the exercise of impermissible hindsight, without any of the “articulated reasoning with some rational underpinnings” required by the U.S. Supreme Court, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385(2007).

Thus, no *prima facie* case of obviousness has been established. Accordingly, withdrawal of the obviousness rejection is respectfully requested.

Turning now to new claims 18-20, these claims depend from amended claim 1, and thus, are allowable at least for the reasons put forth for the allowability of claim 1.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

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Date

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